



Ninety-Eighth Legislature - Second Session - 2004
Committee Statement
LB 850

Hearing Date: February 18, 2004

Committee On: Judiciary

Introducer(s): (Mossey, Aguilar, Combs, Erdman, Friend, Kruse, Mines, Quandahl, Synowiecki, Stuhr, Tyson, Stuthman)

Title: Create the offense of domestic assault

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

8 Yes Senators Brashear, Chambers, Foley, Mines, Mossey, Pedersen, Quandahl, Tyson

No

Present, not voting

Absent

Proponents:

Senator Ray Mossey
Tricia Freeman

Dawn Griffin

Tara Muir

John Ewing

Marty Conboy

Larry Thoren

Representing:

Introducer

County Attorneys Association

Sarpy County

Domestic Violence Coordinating Council

Family Service

Domestic Violence Sexual Assault Coalition

City of Omaha

Omaha City Prosecutor

Police Chiefs Association of Nebraska

Opponents:

John Lindsay

Representing:

Nebraska Association of Trial Attorneys

Neutral:

Representing:

Summary of purpose and/or changes:

LB 850 proposes to create the criminal offense of domestic assault and provides duties for law enforcement and the courts in domestic assault cases.

The criminal offenses of domestic assault in the first, second and third degree are created. First degree domestic assault is defined as knowingly or intentionally causing serious bodily injury to an intimate partner, and is punishable as a class III felony. Second degree domestic assault is defined as knowingly, intentionally or recklessly causing bodily injury to an intimate partner with a dangerous instrument, and is punishable as a class IIIa felony. Third degree domestic assault is defined as knowingly, intentionally or recklessly causing bodily injury to an intimate partner or threatening an intimate partner in a menacing manner, and is punishable as a class I misdemeanor. Enhanced penalties are provided for domestic assaults committed within 12 years of a prior conviction for domestic assault.

LB 850 provides the following duties and obligations for law enforcement in domestic assault situations:

- If complaints are received from two or more opposing persons involved in a domestic dispute, the officer shall evaluate each person separately to determine who the predominant aggressor was. The individual found not to be the predominant aggressor is not required to be arrested; and
- When arresting an individual for domestic assault, a peace officer is also required to seize all weapons that are alleged to have been involved or threatened to be used in the assault. In addition, a peace officer may seize any firearms and ammunition in the plain view of the officer or discovered pursuant to a consensual search, if necessary for the protection of the officer or other persons.
- Authorizes a peace officer to arrest, without a warrant, persons whom the officer has reasonable cause to believe has committed the following against an intimate partner: attempted assault, made threats of physical harm, or engaged in sexual contact or penetration without consent.

LB 850 also provides the following powers and duties for courts in domestic assault cases:

- allows a judge to consider the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release when determining the conditions of release to be placed on a bailable defendant;
- Prohibits a court from sentencing an individual convicted of domestic assault to house arrest in the victim's residence;
- At sentencing, the court is required to consider the safety and protection of the victim of domestic abuse and members of the victim's family; and
- The court may require an individual convicted of domestic abuse to complete a domestic abuse intervention program in addition to any other penalties.

- Authorizes a court to issue an order approving the interception of wire, electronic, or oral communications by law enforcement investigating a domestic assault case.

Explanation of amendments, if any:

The committee amendment to LB 850 makes the following changes to the bill:

- Strikes section six of the bill. This section proposes to amend the factors that judges may consider when determining bail to include the threat posed by the defendant to another individual or the public. This change requires a constitutional amendment to properly implement, and is therefore being removed from the bill.
- Amends the definition of intimate partner found in section 2 of the bill and the definition of household member found in sections 3 and 10. The amendment replaces the terms intimate or sexual relationship with dating relationship and replaces the language outlining the factors a court may consider when determining if two parties are involved in an intimate or sexual relationship with a more specific definition of dating relationship. The purpose of this change is to provide additional guidance to the courts in interpreting this language and avoid potential vagueness challenges to the statute.
- Makes technical and grammatical changes to section 2 of the bill defining the offenses of 1st, 2nd and 3rd degree domestic assault.
- Replaces the language “threatens another intimate partner in a menacing manner” found in the definition of third degree domestic assault with the phrase “places, by physical menace, his or her intimate partner in fear of imminent bodily injury”. The purpose of this change is to be consistent with the definition of abuse found in section 42-903 of the Domestic Abuse Act and the proposed change to section 42-404.02 found in section 3 of the bill.
- Adds language to section 4(1) of the bill to clarify that officers are not required to arrest an individual found to have committed domestic assault and that issuance of a citation does not require the defendant to be brought before a magistrate for determination of bail and conditions of release.
- Adds and reinstates internal references to existing statutes in section 4 and section 8 of the bill.

Senator Kermit A. Brashear, Chairperson